

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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ESTATE OF JOSEPH BAGAROZZA,

Plaintiff,

-against-

**ORDER**

Case No. 08-CV-2892

THE CITY OF NEW YORK,

Defendant.

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X

*Appearances:*

*For the Plaintiff:*

BENJAMIN BRAFMAN, ESQ.  
Brafman & Ross, P.C.  
767 Third Avenue, 26th Floor  
New York , NY 10017

*For the Defendant:*

KENNETH S. SASMOR, ESQ.  
New York City Law Department  
100 Church Street  
New York , NY 10007

SAUL WARREN BIENENFELD, ESQ.  
Bienenfeld & Wertman  
26 Broadway, 21st Floor  
New York , NY 10004

GINA M. VENEZIA, ESQ.  
WAYNE D. MEEHAN, ESQ.  
Freehill, Hogan & Mahar  
80 Pine Street, 24th Floor  
New York , NY 10005

**BLOCK, Senior District Judge:**

Upon reading the affidavits and affirmations submitted by counsel for plaintiff, and the exhibits attached thereto; the infant, Kristen Bagarozza, her appointed legal guardian, and her counsel having appeared before me on January 28, 2009; and it appearing that the best interests of the infant will be served, upon all of the papers, pleadings and proceedings in this case thus far,

NOW, on motion of the law firms Bienenfeld & Associates and Brafman & Associates, attorneys for the plaintiff, it is

ORDERED, that the defendant herein pay the total sum of \$1,225,000.00 in cash and future periodic payments (the "Settlement Payment") on full settlement of the claim herein; and it is further

ORDERED, that out of the Settlement Payment there be paid by the defendant to Notre Dame Academy the sum of \$5,100.00; and it is further

ORDERED, that out of the Settlement Payment there be paid by the defendant to Tuition Management Assets the sum of \$5,580.00; and it is further

ORDERED, that out of the Settlement Payment there be paid by the defendant to Marie Fucile the sum of \$63,039.00; and it is further

ORDERED, that out of the Settlement Payment there be paid by the defendant to Prudential Assigned Settlement Services Corporation the sum of \$737,891.00 to fund the following periodic payments for Kristen Bagarozza:

Guaranteed payments continuing for four (4) years only, providing \$40,000.00 per year, level income, with the first payment commencing on August 9, 2011.

Payments continuing for the lifetime of Kristen Bagarozza with forty (40) years of payments guaranteed in the event of premature death, providing \$2,000.00 per month, increasing by 3% compounding annually, with the first payment commencing on August 9, 2015. The first increase will take effect on August 9, 2016.

Guaranteed lump sum payments of:

\$50,000.00 on August 9, 2018

\$75,000.00 on August 9, 2023

\$100,000.00 on August 9, 2028

\$177,600.00 on August 9, 2033;

and it is further

ORDERED, that defendant shall assign the obligation to make the future periodic payments described herein to Prudential Assigned Settlement Services Corporation (the “Assignee”) pursuant to § 130(c) of the Internal Revenue Code. The Assignee shall fund its obligation to make the future periodic payments through the purchase of an annuity from the Prudential Insurance Company of America (the “Annuity Issuer”); and it is further

ORDERED, that in the event Kristen Bagarozza fails to survive, any of the periodic payments to be made after her death shall be made to the Estate of Kristen Bagarozza, or to such beneficiary as may be requested of the Assignee in writing by Kristen Bagarozza upon attaining majority; and it is further

ORDERED, that out of the Settlement Payment there be paid by the defendant to Bienenfeld & Associates, attorneys for the plaintiff, the sum of \$7,586.00 for expenses and disbursements, and the sum of \$245,000 (i.e., 20% of the Settlement Payment) for attorney's fees; and it is further

ORDERED that this matter be assigned to Magistrate Judge Viktor V. Pohorelsky for further proceedings as to the disposition of the remainder of the Settlement Payment left unaccounted for by this Order; and it is further

ORDERED, that the making and filing of a bond be and hereby is dispensed with.

**SO ORDERED.**

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FREDERIC BLOCK  
Senior United States District Judge

Brooklyn, New York  
February \_\_, 2009